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2 **Minutes (draft)**
3 **FORENSIC SCIENCE BOARD MEETING**
4 **October 17, 2007 at 10:00 a.m.**
5 **DFS Central Laboratory, Training Room 1**
6

7 Board Members Present:
8

9 Mr. Steven Benjamin
10 Mr. Joseph Bono, Chair
11 Ms. Linda Carne (designee for Mr. Robert Jensen)
12 Mr. Craig Hartley (designee for Mr. Leonard Cooke)
13 Ms. Katya Herndon (designee for Mr. Karl Hade)
14 Mr. Alan Katz (designee for Ms. Marla Decker)
15 Norah Rudin, Ph. D. (designee for Mr. Barry Fisher)
16 Ms. Elizabeth S. Russell
17 Major Tavenner (designee for Colonel W. Steven Flaherty)
18 Mr. James Towey (designee for Delegate D. Albo)
19

20 Board Members Absent:
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22 Marcella Fierro, Ph.D.
23 Sheriff F.W. Howard
24 Mr. S. Randolph Sengel

25 Staff Members Present:
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27 Ms. Wanda Adkins, Office Manager
28 Mr. Jeff Ban, Acting Forensic Biology Section Chief, Central Laboratory Director
29 David Barron, Ph.D., Technical Services Director
30 Ms. Donna Carter, Fiscal Officer
31 Mr. Doug Chandler, Technology Services Manager
32 Ms. Jessica Creed, Board Secretary
33 Ms. Leslie Ellis, Human Resources Director
34 Ms. Michele Gowdy, Department Counsel
35 Mr. Brad Jenkins, Mitochondrial DNA Supervisor
36 Mr. Ron Layne, Director of Administration and Finance
37 Ms. Alka Lohmann, Breath Alcohol Section Chief
38 Mr. Pete Marone, Director, Department of Forensic Science
39 Mr. Kevin Patrick, Western Laboratory Director
40 Mr. Steve Sigel, Deputy Director
41 Mr. Sherwood Stroble, Policy, Planning and Budget Manager
42 Ms. Susan Uremovich, Eastern Laboratory Director
43 Ms. Amy Wong, Northern Laboratory Director
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47 Call to Order:

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49 The meeting was called to order at 10:02 a.m.

50
51 Adopt Jessica Creed as the new Board Secretary

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53 Mr. Bono requested a motion to adopt Jessica Creed as the new Board Secretary. Motion
54 was made by Ms. Katya Herndon, seconded by Ms. Linda Carne and passed by
55 unanimous vote.

56
57 Adoption of Agenda:

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59 Mr. Bono made an amendment to the agenda that, *Item V. Legislative Proposals*, would
60 be addressed within the Department Director's Report. He asked if there was a motion to
61 adopt changes and agenda. Mr. Alan Katz made a motion to adopt the agenda with
62 changes, seconded by Ms. Katya Herndon and passed by unanimous vote.

63
64 Approval of draft minutes:

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66 Mr. Bono asked if there were any corrections to be made to the minutes from the August
67 8, 2007 meeting.

68
69 Mr. Benjamin referenced lines 236-238 regarding the discussion of his motion on the
70 definition of "inconclusive" in post-conviction testing. He requested this section be
71 transcribed and placed as an addendum to the August 8, 2007 meeting minutes.

72
73 Ms. Michele Gowdy mentioned a typo in line 167, the word "and" should be "an". Ms.
74 Herndon also mentioned other corrections; on line 20, "Representative Albo" should be
75 "Delegate Albo" and in line 244 her name was spelled incorrectly.

76
77 Mr. Benjamin brought to the Board's attention lines 204-208 regarding Director
78 Marone's Director's Report referring the Mary Jane files. There was a discrepancy in the
79 numbers that Director Marone reported at the meeting and the numbers that were
80 recorded in the August minutes. Steven Benjamin requested that a full transcription of
81 that section of the Director's Report be attached as an addendum to the minutes.

82
83 Mr. Bono asked for a motion to accept the minutes as amended to include the two
84 addendums. Mr. Towey made a motion, seconded by Norah Rudin, Ph.D., and it passed
85 unanimously.

86
87 Chairman's Report:

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89 Mr. Bono informed the Board that the November 1 Report would be addressed as Item IX
90 of the agenda and the Mid-Atlantic Innocence Project would give a presentation during
91 the Public Comment section of the meeting.

93 Director's Report:

94
95 Director Marone explained the workload summary handout in the Board's packet which
96 summarized the workload and backlog reports by section.

97
98 The Department is currently recruiting the position of Forensic Science Manager 1 (DNA
99 Section Chief). This position is being nationally recruited and will be posted from
100 9/19/07 - 10/31/07. The following are some of the qualifications for this position:

- 101 • Master's Degree or Waiver by ASCLD
- 102 • 3 years of Laboratory experience as a Forensic Nuclear DNA examiner
- 103 • QA/QC experience
- 104 • Expert testimony
- 105 • Research and Methods development

106
107 Director Marone summarized DFS building projects: 1) Northern Laboratory
108 construction has begun with an expected move-in date of April 2009; 2) Central
109 Administration is moving from Central Laboratory to Biotech 8 in February 2008; and 3)
110 Eastern Laboratory expansion on the 5th floor is continuing to be negotiated with the City
111 of Norfolk.

112
113 Director Marone updated the Board on status of the budget. DFS began FY2008 with an
114 increase of approximately \$1.5 million in appropriations, as compared to funding
115 provided in FY2007. The majority of this additional funding was for increases in
116 operation and maintenance expenses of the laboratories. At the beginning of the second
117 quarter of FY2008, DFS was advised that the Governor requested that all state agencies
118 take a 5% reduction. DFS' reduction would be \$1,693,100.00 and must be achieved by
119 the end of FY2008. Director Marone summarized for the Board the reductions that DFS
120 would be implementing.

121
122 Director Marone next addressed the DNA/Serology case files. He reported that 518,431
123 files have been screened for evidence at this time out of approximately 534,000:

- 124 • 2208 cases had crime scene evidence and a suspect.
- 125 • 837 cases had crime scene evidence and no suspect.
- 126 • 1911 cases had only known samples.
- 127 • 473 had been reviewed by Forensic Biology.
- 128 • 233 had been determined to be ineligible (76 had no conviction or not guilty plea
129 and 157 were based on forensic biology criteria).
- 130 • 166 were sent to contractors
- 131 • 107 had results that have been return to the Department

132
133 As of October 2007:

- 134 • 473 of the 2,208 cases eligible for DNA analysis have been reviewed by DFS
- 135 • 233 cases have been determined ineligible
- 136 • 66 cases require additional information, which DFS is seeking, before it can be
137 determined if the case is eligible for DNA testing

- 166 cases have been sent to the contract laboratory for testing
- 8 cases will be sent to the contract laboratory in the near future
- 60 of the cases returned from the contract laboratory have been reviewed
- 6 of the cases returned were determined after further investigation to not meet the criteria for further evaluation (the defendant was not convicted, convicted of a misdemeanor, or no listed suspect was identified)

Director Marone informed the Board that DFS had met with the Governor and his Chief of Staff on the status of the Mary Jane files. Meetings have also been scheduled for October 19, 2007 with the Commonwealth's Attorneys' Service Council and October 22, 2007 with the Mid-Atlantic Innocence Project to discuss and review the Mary Jane protocols.

Mr. Benjamin inquired if the Governor would be making the results of the Mary Jane files public? Director Marone responded that the Governor has the information and it would be his decision whether to make the results public.

Norah Rudin, Ph.D., inquired if the original 31 files were part of the 518,431 files? Director Marone replied that the original 31 files were separate from the 518,431. At the completion of the required 10% sampling of case files it was decided that DFS would continue to review all files from 1973-1988.

Mr. Bono requested that at future Board meetings a flow chart with the Mary Jane cases and numbers be prepared as a handout for the Board.

Norah Rudin, Ph.D., asked if there is a mechanism by which a convicted felon not meeting the criteria could request testing.

Mr. Benjamin responded although there is a testing statute in the Code of Virginia, it may not apply and would require a legislative change, if DFS did not have a policy.

Ms. Herndon added that the post conviction testing statute applies to any person that is convicted of a felony.

Norah Rudin, Ph.D., asked if there was a way to notify the suspects whose Mary Jane case files have biological evidence in them since they do not know that evidence may still exist in their respective case file.

Mr. Bono recommended writing letters to the suspects and Mr. Benjamin agreed that the suspects should be notified of the evidence in their file. Mr. Bono requested that Mr. Benjamin draft a proposal for the Board's review at the next Board Meeting.

Ms. Herndon stated that the Board should not give the suspects legal advice. The Board should give the Mid-Atlantic Innocence Project the list of suspects to be notified of the evidence that still exist in their case file.

Director Marone continued his report regarding the Department's two legislative proposals that have been approved by the Secretary of Public Safety. The first seeks to define "Ammunition"; the second seeks clarification of Sex Offender Registry to codify the fact that misdemeanors should be placed into the DNA data bank.

Update by DFS on R. Sengel's Regional Laboratory Visits:

David Barron, Ph. D., gave a presentation on concerns that Mr. Sengel reported at the August meeting that arose from his visits to the regional laboratories.

November 1, 2007 Report

Mr. Bono stated that it is his responsibility to provide to the Chairmen of the Virginia State Crime Commission, the Senate Finance Committee and the House Appropriations Committee a report from the Forensic Science Board before November 1st of each year.

Ms. Herndon stated some corrections needed to be made to the recipients listed on the November 1 report.

Mr. Benjamin pointed out that on page 2 in the Serology Case Review Section it states the number of cases as 2206 instead of 2208 cases.

Ms. Herndon recommended an introductory sentence for the Serology Case Review Section to be added to explain the numbers and how they were derived.

Mr. Bono agreed that the corrections/additions be made to the November 1 report so that it could be signed and forwarded to the appropriate members of the legislation.

Selection of future meeting date(s):

Mr. Bono reported that the 2008 meetings are scheduled for January 9, 2008, May 7, 2008, and August 6, 2008, all starting at 10:00 a.m. The final meeting of 2008 is tentatively scheduled for October 22, 2008, to allow the Board to meet before the November 1 report is due.

New Business:

There was no new business to discuss.

Public Comment:

Mr. Bono received a letter from the Shawn Armbrust, Executive Director of the Mid-Atlantic Innocence Project requesting permission to give a presentation to the Board.

Ms. Armbrust presented a proposal on modifying the Virginia Post Conviction DNA Statute (Virginia Code Section 19.2-327.1) to allow the defendants' to obtain Post

230 Conviction testing not performed by the Department of Forensic Science. She presented
231 two cases in which she believes Y-STR testing would be appropriate. Y-STR testing is
232 not currently performed by the Department of Forensic Science.

233
234 Mr. Michael Harris and Mr. Michael Hash were both convicted of two separate rapes
235 where DNA testing was conducted. In Ms. Armbrust's opinion Y-STR testing could
236 assist in these cases. Ms. Armbrust explained that Ms. Cassie Johnson employed by
237 Orchid Cellmark would inform the Board in detail on how the results of the Y-STR
238 testing would be beneficial for some defendants.

239
240 Ms. Cassie L. Johnson, Supervisor and Technical Leader for Y-STR and Mitochondrial
241 testing at Orchid Cellmark, presented a power point presentation in detail about Y-STR
242 testing.

243
244 Norah Rudin, Ph. D., commented on how she supports the use of Y-STR testing.

245
246 Mr. Benjamin asked if Ms. Armbrust would have an objection to adding a subparagraph
247 to her proposed legislation. He suggested the costs should be borne by the petitioner if the
248 testing is ordered at a laboratory other than the Department of Forensic Science.

249
250 Ms. Armbrust said that she saw no problem with Mr. Benjamin's suggested changes at
251 this time.

252
253 Mr. Benjamin suggested that the wording "cannot" be substituted with "does not" in two
254 separate places in their document.

255
256 Ms. Armbrust had no objections.

257
258 Mr. Bono asked if the Board could draft a proposal to be sent to the General Assembly.

259
260 Mr. Hartley asked from a law enforcement stand point if there is a difference between
261 obtaining a DNA sample for STR vs. Y-STR testing. Ms. Armbrust commented that the
262 collection procedure is the same.

263
264 Director Marone commented that the timeframe for DFS to submit legislation to the
265 Secretary of Public Safety has passed and the request for Y-STR testing should be made
266 after STR testing was performed by DFS.

267
268 Ms. Russell commented that every state agency has a procedure for reviewing legislation
269 that affects their agency. If the proposal from the Innocence Project was endorsed by
270 someone in the legislature, then the agency would have an opportunity to comment on its
271 impact.

272
273 Mr. Bono stated that he would totally endorse this legislation, if the laboratories were
274 accredited by ASCLD-LAB.

276

277 Adjourn:

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279 The meeting adjourned at 11:47 a.m.